LEAR PETROLEUM EXPLORATION, INC.

IBLA 85-569
85-631 Decided January 30, 1987

Appeal from a decision of the Colorado State Office, Bureau of Land Management, which rejected noncompetitive offers to lease C-40067 and C-40092.

Reversed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings

Where it is clear from the record that the person signing a simultaneous oil and gas lease offer on behalf of a corporation is a duly authorized corporate officer, compliance is established with the requirements of the regulation at 43 CFR 3102.4 notwithstanding the fact the signing officer was identified as an attorney-in-fact.

Enserch Exploration, Inc., 70 IBLA 25 (1983), overruled to the extent inconsistent.

APPEARANCES: Howard L. Boigon, Esq., and Charles L. Kaiser, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Lear Petroleum Exploration, Inc. (Lear), appeals from two decisions issued by the Colorado State Office, Bureau of Land Management (BLM). The BLM decisions rejected two offers to lease for oil and gas. Lear had received first priority for both parcels, serialized as C-40092 and C-40067, in the August 1984 simultaneous oil and gas drawing. Because these cases were handled together by BLM, and because the rejection of both offers is related, the cases are consolidated for decision.

BLM rejected Lear's offer to lease by decision dated March 28, 1985, as to C-40092, and May 7, 1985, as to C-40067. Both offers were signed by Vincent Matthews III, with the words "attorney-in-fact" written under his name. Both offers referred to "appellant's qualification file for a power of attorney evidencing his authority." The BLM decision dated March 28, 1985, rejected offer C-40092 because the power of attorney in the qualifications file did not indicate that Matthews was prohibited from filing offers for other participants and because the power of attorney, by its own terms, had expired November 2, 1983, and therefore was not in force and effect.

BLM employees handling the Lear application became aware, however, that Matthews was competent to sign on behalf of Lear in his corporate capacity as a division manager immediately following the March 28, 1985, rejection of the Lear offer in C-40092. A memorandum to the file explains that, at a meeting at the BLM office following rejection of lease offer C-40092 several Lear officials

> indicated that the Bureau should treat the offers signed by Vincent Matthews II [sic] as if there were no indication of his capacity. they pointed out that if Mr. Matthews had signed without referring to the power of attorney, the Bureau would have inquired what his relationship to Lear Petroleum Exploration, Inc. was and would have been informed of his Division Manager status. Accordingly, the Instruction Memorandum (Item 2) would have required this office to accept the offer as sufficient, even though no relationship between Mr. Matthews and Lear was indicated on the offer when presented.

Memorandum to file dated April 30, 1985, at 1. After discussing the implications of the status of Matthews in the Lear organization, the memorandum concludes:

> The case of C-40067 was also discussed at the meeting. Apparently, so far as I could determine from the file, no action had been taken to reject the offer (although the same probable defect exists) because of the requirement for unit joinder. I indicated that I would check the unit status and advise further on that matter.

Id. at 2.

In the subsequent decision rejecting lease offer C-40067, the decision-maker commented upon the circumstance that Matthews was authorized to sign both lease offers in his capacity as a division manager, although his power to do so as attorney-in-fact had expired:

> On April 23, 1985, this office was advised that Vincent Matthews III was also authorized to sign for Lear as Division Manager of the Corporation's Rocky Mountain Division. Subsequent evidence was received on April 26, 1985 satisfactorily establishing that Mr. Matthews could have executed lease offer C-40067 in his capacity as Division Manager. The information was provided as a consequence of this office's rejection of Lear's offer to lease another parcel, serialized as C-40092, from the August 1984 list.
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> For the purpose of accepting or rejecting offer C-40067 from Lear, this office assumes that Mr. Matthews was authorized to sign the offer as Division Manager for Lear. Had Mr. Matthews failed to indicate any relationship to Lear, the procedures implemented by BLM Instruction Memorandum 84-658, as approved by the

> Under Secretary, would have resulted in inquiry by this office about Mr. Matthews' relationship to Lear. Had this office been informed of his capacity as Division Manager, lease C-40067 would have normally issued to Lear, all else being regular.

BLM decision of May 7, 1985, at 1, 2. The decision then went on to reject offer C-40067 for the reasons that

> 1) The offer was signed by an attorney-in-fact and the offeror failed to comply with 43 CFR § 3112.6-1 by either furnishing a copy of the power or properly referencing its location; or
>
> 2) Assuming that the power of attorney contained in C-28671 is valid and was renewed or extended beyond its stated expiration date of November 2, 1982 [sic], it fails to comply with the regulatory requirement that it must prohibit the attorney-in-fact from filing for other applicants (As the file contains another power from a related company, Lear Petroleum Corporation authorizing Mr. Matthews to sign offers for that related corporation, such a prohibition might have created a conflict with the authority granted by both powers; a prohibition in either power could have been resolved by the attorney-in-fact himself, but a prohibition in both such powers would, we think, be irreconcilable); or
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> 3) Assuming that Mr. Matthews might not have been properly authorized to sign as an attorney-in-fact (The statements submitted by Lear seem to indicate that Mr. Matthews was so authorized, but this office has no copy of any document creating such authority other than the one that seems to have expired November 2, 1982), [sic] Lear should not be allowed to correct, after the 30 days allowed for submission of the executed offer, an erroneous representation that Mr. Matthews was authorized to and was acting as an attorney-in-fact for Lear. [Note: this ground for rejection should not be viewed as accusatory; Lear has asserted that Mr. Matthews was an attorney-in-fact; this office merely has no written documentation of such authority.]

Id. at 3.

In the case of the first lease offer to be rejected, C-40092, the contact between BLM and Lear was initiated in an effort by Lear to obtain reconsideration of the March 28, 1985, decision to reject the offer. The memorandum to the file dated April 30, 1985, indicates that this effort failed at least in part because of concern by BLM that the inclusion of the "attorney-in-fact" label on the application was fatal to Lear's offer. 1/

1/ The memorandum writer commented, at page 2, that "there was a difference in policy between the issue of the adequacy of disclosure of the signatory relationship (ANR [Production Co., v. Watt] and 43 CFR 3102.4) and the issue of attorneys-in-fact signing simultaneous offers." Id. at 2.

That this concern was central to BLM's decisionmaking in this case is confirmed in the case of the second rejection, C-40067, where the decision recites that the inclusion of the title "attorney-in-fact" constituted a defect which was not curable and which was of significant proportion:

> This office concludes, however, that Mr. Matthews was acting as an attorney-in-fact when he executed the offer for lease C-40067. The copies of the offer bear a white-out material in the offeror's signature space that apparently was designed to eradicate a signature made by someone else before Mr. Matthews signed the offer. Similar white-outs appear on the Forest Service stipulations attached to the offer. "Attorney-in-Fact" is clearly stamped under Vincent Matthews' signature; another stamping nearby refers to the currency of the authority and its location in C-28671. These stampings were made by Lear, presumably before Mr. Matthews signed or at least under his supervision as Division Manager, this office concludes from the material presented that he was clearly acting as an attorney-in-fact when he signed the offer.
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> Nothing in regulation 43 CFR § 3112.6-1 appears to allow any exceptions to the rigid requirements of that section when an attorney-in-fact signs an offer for a simultaneous applicant. A comparable earlier regulation, 43 CFR § 3102.6-1 (1979), provided members of associations and officers of corporations signing as attorneys-in-fact exemptions from cumbersome requirements to submit separate statements concerning other parties-in-interest that might be involved with any oil or gas offer or assignment (43 CFR § 3106.1-5 (1979)). [Emphasis in original.]

BLM decision of May 7, 1985, at 2.

It is apparent BLM mischaracterized the regulation at issue in these cases and that these appeals hinge on the proper application of the regulation at 43 CFR 3102.4 rather than the regulation at 43 CFR 3112.6-1.

The BLM memorandum to the file dated April 30, 1985, refers to several decisions of this Board which have considered the authority to sign lease offers of persons acting as agents for corporations and partnerships. Two of those cases, ANR Production Co., 82 IBLA 228 (1984), and Corinth Partnership (On Remand), 83 IBLA 277 (1984), are of particular relevance to these appeals. In the ANR decision, the Board was acting in response to a federal district court decision and order which had observed that

> where it appears the failure to show the relationship of the person signing the application did not hinder BLM's handling of the application, strict application of the rule [43 CFR 3102.4] was unnecessary and unreasonable. The Court finds that the BLM employees charged with handling the application in this case had actual knowledge of the identity of the signer of the ANR application, and knew his relationship to ANR. Under these circumstances, the Court finds that lease issuance to ANR was improperly denied.

Id. at 229. In the Corinth decision, the Board was directed by the Under Secretary to conform the result in the prior decision in Corinth Partnership, 80 IBLA 31 (1984) to the decision by the district court in ANR Production Co. v. Watt, No. 83-0375 (D. Wyo. Jan. 11, 1984). The effect of this was to order the Board to adopt the position of the dissent in the earlier Corinth decision. which also relied upon the district court's ANR decision, and which had quoted the court decision for the proposition that:

> It is reasonable to presume that the requirement of revealing the relationship between the signatory and the applicant as well as the requirement of providing a qualification file number are for administrative purposes. They serve to ease the burden of processing and determining qualified applicants. However, in this case there was no burden on the BLM in processing plaintiff's application. BLM was familiar with the file and had no apparent problem determining the identity of the signatory.

80 IBLA at 38.

Applying this reasoning to both these cases, therefore, there is no reason to reject either of the lease offers made by Lear because there is in fact no material defect in the lease offers. Both offers were properly signed by a corporate officer who was authorized to make such offers on behalf of the corporation.

BLM acknowledges in the May 7 decision to reject lease C-40067 that it knows Matthews is a corporate officer whose power to act on behalf of Lear is not challenged, and that, were it not for the fact he had styled his signature other than "Division Manager," the lease would have been approved. Despite this knowledge it rejected the second of the two leases before it, and stated that the reason for rejecting both leases was the same: the use of the attorney-in-fact stamp was an incurable defect which had invalidated both offers because, at the time it was used, the form of power furnished by Lear to BLM was defective, even though Matthews' authority to act on behalf of the corporation was unimpeachable.

A similar situation involving the characterization of a signature was considered in Winkler v. Andrus, 594 F.2d 775 (10th Cir. 1979), a decision which reversed a decision of this Board, Joseph A. Winkler, 24 IBLA 380 (1976), involving a lease offer signed by an individual offeror who had placed a stamp after his name indicating that he might have been acting for a business organization in an undisclosed capacity contrary to regulation. The Board rejected Winkler's appeal despite his explanation that the use of the stamp was merely an irrelevance. It seems Winkler sold insurance, and the stamp bore the legend "J. A. Winkler Agency," and was used in his insurance business which he alone owned. Reversing, the Tenth Circuit Court of Appeals observed that the decision to reject Winkler's offer was for a "trivial and inconsequential" reason. The court observed:

> One wonders why the Department would become involved in a problem such as that which is present here. One explanation appears in the brief of the Department of Interior: "In the

> long run, the holding in this case will minimize challenges to BLM rulings." This is not a valid argument. Judicial decisions are not made so as to discourage assertion of rights in court. Moreover, the argument is not effective for the purpose offered. It is not sound to assume that a citizen will accept as the last word an adverse ruling such as this: one which is founded on a trivial and inconsequential point. The Department would have served justice in a better way if it had recognized and acknowledged the lack of substance in its position. Had it done so, it would have been simple for the Department, once it became clear that the corporation assumption by it was purely a misunderstanding on its part, to have stricken the word "agency" as surplusage and to have allowed the application.

594 F.2d at 778.

So in this case the words "attorney-in-fact" are "surplusage" which should not have been considered by BLM when evaluating the authority of Matthews to sign on behalf of the corporation. Matthews' authority to act for Lear is not in doubt, and had not been in doubt since his position as division manager was made known in April 1985. Prior to that disclosure, when the expired power-of-attorney was found in the qualifications file still maintained by BLM for Lear, it was not apparent that Matthews did not have the authority to act. Rather, there existed a situation where it was incumbent upon BLM to inquire into the actual circumstances of the authority of Matthews pursuant to the rule stated in Corinth Partnership (On Remand). In that latter Corinth decision, the Board adopted as its own BLM Instruction Memorandum No. 84-658 dated August 15, 1984. This memorandum concluded that "[i]f there is reason to believe that [corporate authority is] not in evidence to constitute a properly filed application and an unidentified third party has signed for the applicant you may make necessary checks to verify whether there are grounds for rejection." Corinth Partnership (On Remand), 83 IBLA at 278, quoting IM No. 84-658. Under the circumstances, therefore, in the case of both of Lear's lease offers, when it became apparent to BLM that there was a question about the current validity of the authority of Matthews, it was then incumbent upon the agency to "make necessary checks" in order to "verify whether" the applications could or should be rejected. See ANR Production Co., 82 IBLA at 228.

The regulation at the source of this controversy is 43 CFR 3102.4, pertaining to signatures on offers. This regulation indicates, by way of the use of an example, that persons signing for a corporation need not indicate their corporate status, provided they are within the corporate organization. See Corinth Partnership at 80 IBLA 36 (dissenting opinion). This distinction has now been given more explicit definition by the rule of IM 84-658, as adopted in Corinth Partnership (on Remand), which establishes that, so far as 43 CFR 3102.4 applies to this case, it must be shown that the signer of the lease offers, Matthews, was not an authorized officer of the corporation when he signed on behalf of Lear if the offers are to be rejected pursuant to the regulation. Or, as the Board said in Irvin Wall, 69 IBLA 371 (1983), there must be shown a valid reason why the offer should be held to be defective before it may be rejected.

In these cases no such disqualifying reason has been shown. Matthews has been shown to be qualified to sign the offers. The designation appearing following his signature which referred to the expired power of attorney was merely extraneous matter which at most, required further inquiry by BLM. That inquiry having now been accomplished, and the authority of Matthews to sign having been established to the satisfaction of the agency, the offers should now be accepted and leases issued, all else being regular.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed.

Franklin D. Arness
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Anita Vogt
Administrative Judge, Alternate Member